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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,814	10/22/2001	Takeshi Miyao	1743/189	2996

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EXAMINER

CHAVIS, JOHN Q

ART UNIT	PAPER NUMBER
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2124

DATE MAILED: 04/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/914,814

Applicant(s)

MIYAO ET AL.

Examiner

John Q. Chavis

Art Unit

2124

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2001 and 30 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it is longer than 150 words.

Correction is required. See MPEP § 608.01(b).

Information Disclosure Statement

3. The information disclosure statement filed 08/30/2001 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. A copy of reference 2-128243 has not been provided.

4. The information disclosure statement filed 08/30/2001 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. The references, for which no translation has been provided, see the PTO-1449, have not been

considered. The references for which only a translated abstract has been provided are considered based on the abstract only.

Priority

5. The foreign priority claim filed on PCT/JP99/04936 was not entered because the foreign priority claim was not filed during the time period set forth in 37 CFR 1.55(a)(1). For original applications filed under 35 U.S.C. 111(a) (other than a design application) on or after November 29, 2000, the time period is during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. For applications that have entered national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the claim for priority must be made during the pendency of the application and within the time limit set forth in the PCT and the Regulations under the PCT. See 37 CFR 1.55(a)(1)(ii). If applicant desires priority under 35 U.S.C. 119(a)-(d), (f) or 365(a) based upon a prior foreign application, applicant must file a petition for an unintentionally delayed priority claim (37 CFR 1.55(c)). The petition must be accompanied by (1) the claim (i.e., the claim required by 35 U.S.C. 119(a)-(d) and (f) and 37 CFR 1.55) for priority to the prior foreign application, unless previously submitted; (2) a surcharge under 37 CFR 1.17(t); and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional. The petition should be directed to the Office of Petitions, Box DAC, Assistant Commissioner for Patents, Washington, DC 20231.

Double Patenting

Art Unit: 2124

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/189,181. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the reasons cited below in reference to claim 1.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: both claims claim an operating system management system for managing a plurality of operating systems and the present invention specifically claims a recording unit for recording ...state of each operating system (the previous application claims enabling a plurality of operating systems to record its operating information (i.e. "state) ...). The present invention also claims a searching unit... (while, the previous invention claims finding

Art Unit: 2124

(i.e. "searching") the correspondence... Also, the present invention claims wherein said management system finds a sequence of other operation information... (while, the previous invention finds the sequence of operation information items recorded (i.e. "other operating information"...) The other claims have the same type of similarity as the present claim 1 of each application.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by McKeeth (6,330,669).

Claims

1. An operating system management method for managing a plurality of operating systems, comprising the steps of:

a recording unit for recording operation information transferred from an operation information memory for storing ...;

a searching unit for searching operation information assumed as a reference to said other operation information

McKeeth

See the title and the abstract of the invention.

See fig. 3 and col. 1 lines 48-col. 2 lines 26.

See col. 2 lines 27-30, with the automatically integrated information providing for the correspondence and

items...; and

approximate same time operating information. Also, see col. 4 lines 30-49.

wherein said management system finds a sequence of operation information items recorded in said operation information subsequent memories...

The changes made by McKeeth inherently represents a sequence; since, after initial changes are made,

changes follow. See also fig. 3 item 224 and col. 3 lines 18-29.

Claims 2-3 and 5-8 are rejected as claim 1.

As per claim 4, see the monitoring and recording of changes in the abstract and the changing (222) and merging (224) of settings in fig. 3.

10. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Zalewski et al. (2002/0016892).

Claims

Zalewski

1. An operating system management method for managing a plurality of operating systems, comprising the steps of:

See the title and the abstract of the invention.

a recording unit for recording operation...

See page 2, sect. 0018.

a searching unit for searching operation...

See page 2 sect. 0019, in which the assigning of resources and partitioning provides for correspondence and approximate same time operating information. Also, see page 3 sect. 0029. See also the "heartbeat mechanism" (page 17, claims 17-19), as further indication of the correspondence of operation items.

wherein said management system finds...

The concurrency without interruption Zalewsky represents a sequence; since, interference and corruption are

Application/Control Number: 09/914,814

Page 8

Art Unit: 2124

Jqc

March 24, 2003

A handwritten signature in black ink, appearing to read "John Chavis". The signature is fluid and cursive, with a long horizontal stroke at the end.

JOHN CHAVIS
PATENT EXAMINER
ART UNIT 2124

prevented, see page 3 sect. 0034-0035. Section 0035 indicates the cooperative sharing of resources (inherently sequential). See also sections 0042 and 0046. The tree in sect. 0055 provides further indication of a sequence of recorded operations.

Claims 2-3 and 5-8 are rejected as claim 1.

As per claim 4, see the heartbeat initialization (606) feature of fig. 6 and claim 36 on page 18.

The patents to Madden et al. (6,178,503) and Mancisidor (6,519,623), although not specifically cited, are considered pertinent to the applicant's disclosure.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Q. Chavis whose telephone number is 703-305-9665. The examiner can normally be reached on 8:30 am-5:00 pm Est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on 703-305-9662. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-3900.